

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MALINKA MOYE,

No. C-14-3121 EMC (pr)

Plaintiff,

v.

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

NAPA STATE HOSPITAL; *et al.*,

Defendants.

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**I. INTRODUCTION**

Malinka Tacuma Wade Moye, an inmate at the San Francisco County Jail, filed a *pro se* civil rights action under 42 U.S.C. § 1983. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

**II. BACKGROUND**

In his garbled complaint in this action, Mr. Moye alleges many conclusions but virtually no facts. He alleges that he is suing “over use of unreasonable, unnecessary, excessive force, extortion, slavery & kidnapping under false pretenses to admitt plaintiff into State Hospital. Past date of expired Statute of limitations on 5-11-11. 11-08-11.” Docket # 1 at 2 (errors in source).

**III. DISCUSSION**

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek

1 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*  
2 pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
3 (9th Cir. 1990).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right  
5 secured by the Constitution or laws of the United States was violated, and (2) that the violation was  
6 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48  
7 (1988).

8 The complaint has several defects and must be dismissed. First, the complaint fails to allege  
9 “a short and plain statement of the claim showing that the pleader is entitled to relief,” as required by  
10 Federal Rule of Civil Procedure 8(a)(2). The conclusory allegations in the complaint fail to satisfy  
11 some of the basic purposes of a complaint: framing the dispute and giving the defendants and court  
12 notice of the claims upon which relief is sought. “Specific facts are not necessary; the statement  
13 need only . . . give the defendant fair notice of what the . . . claim is and the grounds upon which it  
14 rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and internal quotation marks omitted).  
15 Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to  
16 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a  
17 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be  
18 enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550  
19 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to  
20 relief that is plausible on its face.” *Id.* at 570. In his amended complaint, Mr. Moye must allege a  
21 short and plain statement of each claim for relief he wishes to assert.

22 Mr. Moye indicates that he was sent to Napa State Hospital “illegally” yet also indicates that  
23 he was sent there when he was found mentally incompetent to stand trial. *See* Docket # 1 at 4. In  
24 his amended complaint, he should allege facts showing why the transfer to Napa State Hospital was  
25 illegal. He also should allege whether his transfer was pursuant to court order. Mr. Moye also  
26 alleges that he was admitted “into state hospital. past date of expired statute of limitations 5-11-11.  
27 11-08-11.” Docket # 1 at 2 (errors in source). He does not identify the statute of limitations to  
28 which he refers, or how a statute of limitations would preclude his admission to a state hospital. In

1 his amended complaint, Mr. Moye must explain with more clarity his claim that he was kept at the  
2 hospital too long. Mr. Moye also alleges that someone intentionally and “illegally administered  
3 psychological drugs” to him. Docket # 1 at 2. In his amended complaint, he must explain why the  
4 administration of the drugs was illegal and whether it was pursuant to a court order.

5 Second, the complaint does not adequately link defendants to legal claims. In his amended  
6 complaint, Mr. Moye must be careful to allege facts showing the basis for liability for each  
7 defendant. He should not refer to them as a group (e.g., “the defendants”); rather, he should identify  
8 each involved defendant by name and link each of them to his claim by explaining what each  
9 involved defendant did or failed to do that caused a violation of his rights. *See Leer v. Murphy*, 844  
10 F.2d 628, 634 (9th Cir. 1988). Mr. Moye is cautioned that there is no respondeat superior liability  
11 under Section 1983, i.e. no liability under the theory that one is responsible for the actions or  
12 omissions of an employee. Liability under Section 1983 arises only upon a showing of personal  
13 participation by the defendant. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

14 Plaintiff names as defendants the California State Board of Psychology and the California  
15 Board of Medical Doctors, apparently on the theory that they licensed members of the medical staff  
16 at Napa State Hospital. The fact that these two entities licensed the alleged wrongdoers is not  
17 sufficient to hold them liable under § 1983, as it would be impermissible respondeat superior  
18 liability.<sup>1</sup> *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (no respondeat  
19 superior liability under § 1983 for the actions of the private entity’s employees).

20 One of the named defendants is Napa State Hospital. The Eleventh Amendment to the U.S.  
21 Constitution bars from the federal courts suits against a state by its own citizens, citizens of another  
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23 <sup>1</sup> If Mr. Moye wants to sue the individual doctors and psychologists he can do so. If he does  
24 not know their names, he may sue them as Jane Doe and John Doe defendants. The use of “Jane  
25 Doe” or “John Doe” to identify a defendant is not favored in the Ninth Circuit, *see Gillespie v.*  
26 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980), but sometimes is necessary when a plaintiff cannot  
27 discover the identity of the defendant before filing the complaint. Although the use of a Doe  
28 defendant designation is acceptable to withstand dismissal of a complaint at the initial review stage,  
using a Doe defendant designation creates its own problem: that person cannot be served with  
process until he or she is identified by his or her real name. Mr. Moye must take steps promptly to  
discover the full name (i.e., first and last name) of each of the Doe defendants and provide that  
information to the Court in his amended complaint. The burden remains on the plaintiff; the Court  
will not undertake to investigate the names and identities of unnamed defendants.

1 state, or citizens or subjects of any foreign state. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234,  
 2 237-38 (1985). Eleventh Amendment immunity also extends to suits against a state agency. *See*  
 3 *Brown v. Cal. Dep't of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (California Department of  
 4 Corrections and California Board of Prison Terms entitled to Eleventh Amendment immunity); *see*  
 5 *also Allison v. Cal. Adult Auth.*, 419 F.2d 822, 823 (9th Cir. 1969) (California Adult Authority and  
 6 San Quentin State Prison not persons within meaning of Civil Rights Act). Napa State Hospital is  
 7 dismissed from this action because it is an agency of the State of California facility and has Eleventh  
 8 Amendment immunity against the suit.

9 Third, this action is one of 18 actions filed by Mr. Moye in a one-month period, and there are  
 10 many overlapping allegations between the many complaints and all of the complaints are deficient.  
 11 Because it is a waste of court resources to have to consider multiple complaints alleging the same  
 12 thing, Mr. Moye must limit his allegations *in this action* to acts and omissions that occurred at Napa  
 13 State Hospital. In short, he can assert claims in this action only about the allegedly improper  
 14 transfer to Napa State Hospital and the allegedly improper administration of drugs at Napa State  
 15 Hospital. No other claims should be alleged in the amended complaint.

#### 16 IV. CONCLUSION

17 The complaint fails to state a claim upon which relief may be granted. Leave to amend is  
 18 granted so that Mr. Moye may file an amended complaint to attempt to state a claim against  
 19 defendants. For each instance of a constitutional violation, Mr. Moye should name each person who  
 20 violated his constitutional right(s), describe what each person did or failed to do that caused a  
 21 violation of his constitutional right(s), state where the violation occurred, and state when the

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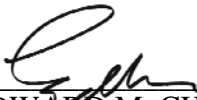
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1 violation occurred. The amended complaint must be filed no later than **September 5, 2014**, and  
2 must include the caption and civil case number used in this order and the words AMENDED  
3 COMPLAINT on the first page. Failure to file the amended complaint by the deadline will result in  
4 the dismissal of the action.

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6 IT IS SO ORDERED.

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8 Dated: July 29, 2014

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11 EDWARD M. CHEN  
12 United States District Judge  
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